

GUIDANCE DOCUMENT:
**PROVISIONS FOR PRIVATE SCHOOL STUDENTS,
TEACHERS, AND OTHER EDUCATION PERSONNEL**
IN
No Child Left Behind Act of 2001

The Elementary and Secondary Education Act (ESEA), as reauthorized by the *No Child Left Behind Act of 2001 (NCLB)*, provides educational services and programs to private school children, teachers and other education personnel, including those in religiously affiliated schools. Benefits and “services funded under NCLB are designed to be of direct assistance to students and teachers and not to private schools” (U.S. Department of Education, NCLB Summary, p. 1). The reauthorized ESEA requires the equitable participation of private school students, teachers, and other educational personnel in some of its major programs.

This document presents information concerning some of the law’s provisions, questions and answers regarding the participation of private school students, teachers, and other educational personnel in the programs, and a brief summary of each program included under equitable participation guidelines (NCLB Title IX § 9501-9504). Much of the information in this document has been drawn from federal guidance documents posted on the United States Department of Education website <www.ed.gov>.

The following programs, which are administered by the California Department of Education (Department), are addressed in this document:

Title I Improving the Academic Achievement of the Disadvantaged

- Title I, Part A – Improving Basic Programs Operated by
Local Education Agencies Page 8
- Title I, Part B – Student Reading Skills Improvement Grants..... Page 10
- Title I, Part C – Education of Migratory ChildrenPage 11

Title II Preparing, Training, and Recruiting High Quality Teachers and Principals

- Title II, Part A - Teacher and Principal Training and Recruiting Fund Page 12
- Title II, Part B - Math and Science Partnerships Page 16
- Title II, Part D - Enhancing Education through Technology Page 17

Title III Language Instruction for Limited English Proficient and Immigrant Students

- Title III, Part A – English Language Acquisition, Language
Enhancement, and Academic Achievement Page 18

Title IV 21st Century Schools

- Title IV, Part A – Safe and Drug-Free Schools and Communities Page 20
- Title IV, Part B – 21st Century Community Learning Centers Page 21

Title V Promoting Informed Parental Choice and Innovative Programs

- Title V, Part A – Innovative Programs Page 22
- Title V, Part D, Subpart 6 – Gifted and Talented Students Page 26

Title VI Flexibility and Accountability

- Transferring NCLB Funds Page 26

QUESTIONS AND ANSWERS

The following are questions and answers to general and program specific private school participation requirements of *No Child Left Behind*.

GENERAL:

The following questions and answers apply to all of the programs listed on pages 1 and 2 unless otherwise noted.

1. *What does equitable participation by private school students, teachers, and other educational personnel mean?*

Title IX of NCLB, §9501-9504 (Uniform Provisions), provides the framework for equitable participation of private school students, teachers, and other educational personnel in programs providing services governed by Uniform Provisions.

Specific legislative language containing this information can be found at:

[<http://www.ed.gov/legislation/ESEA02/pg111.html>.](http://www.ed.gov/legislation/ESEA02/pg111.html)

Under the Uniform Provisions, local education agencies (LEAs), consortiums, or entities receiving federal financial assistance are required to make educational services available to eligible private school students, teachers, and other educational personnel consistent with the number of eligible students enrolled in private elementary and secondary schools in the communities or geographic area served by the LEA, consortium, or entity. These educational services and other benefits must be comparable to the services and other benefits provided to public school students, teachers, and other educational personnel participating in the program and must meet the needs of private school students, teachers, and other educational personnel. The services are to be provided in a timely manner. Private schools are not required to accept the educational services.

To ensure equitable participation, the LEA, consortium, or entity receiving federal financial assistance must:

- Consult with private schools to assess, address, and evaluate the needs of private school students and educators.
- Spend an equal amount of funds per student to provide services.
- Provide private school students and educators with an opportunity to participate in educational services equivalent to the opportunity provided to public school students and educators.

- Offer educational services that are secular, neutral, and nonideological.

Three of the federal programs administered by CDE contain their own federal provisions for the equitable participation of private school students, teachers, and other educational personnel that differ, in some respects, from the Uniform Provisions. These are Title I, Part A (*Improving Basic Programs Operated by Local Educational Agencies*), Title V, Part A (*Innovative Programs*), and Title V, Part D, Subpart 6 (*Gifted and Talented Students*). Information on these provisions can be found in the program specific sections.

2. *What are the requirements for timely and meaningful consultation?*

NCLB §9501(c)(1) states that “to ensure timely and meaningful consultation, the LEA, consortium, or entity shall consult with appropriate private school officials during the *design and development* of the programs” under this Act. At a minimum the LEA, consortium, or entity must consult with private school representatives on:

- How the needs of private school students, teachers, and other educational personnel will be identified.
- What services will be offered.
- How, where, and by whom the services will be provided.
- How the services will be assessed and how the results of the assessment will be used to improve those services.
- The size and scope of the equitable services to be provided to the eligible private school students, teachers, and other educational personnel and the amount of funds available for those services.
- How and when the LEA, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

The LEA, consortium, or entity is to consult with private school administrators prior to the submission of the funding application (i.e., formula or competitive grant) to the Department. During the funding application process, the California Department of Education will collect information on how the LEA, consortium, or entity has complied with this requirement.

3. *What happens if there is a disagreement between the LEA, consortium, or entity and the private school on the provision of services through a contract with a third-party?*

NCLB §9501 states that if the LEA, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the LEA, consortium, or entity shall provide to the private school officials a written explanation of the reasons why it has chosen to use or not use a contractor. The LEA, consortium, or entity should maintain copies of this written communication.

4. *Must an LEA, consortium, or entity contact the officials of all private schools every year, even when there have been no recent indications of a desire to participate in the federal program(s)?*

Yes. The LEA, consortium, or entity is required to contact appropriate officials of all private schools within the boundaries of the school district annually to determine if they want their educators and/or students to participate in the program, regardless of whether or not those officials have indicated any interest in program participation in the past. In addition, for Title I the LEA, consortium, or entity must contact the private schools in other communities that are serving eligible students who are residents of the school district.

LEAs, consortiums, or entities can find a complete list of private schools at:
<<http://www.cde.ca.gov/ds/si/ps/>>

5. *When must an LEA, consortium, or entity consult with appropriate private school officials?*

Uniform Provisions ensures timely and meaningful consultation, an LEA, consortium, or entity shall consult with appropriate private school officials during the design and development of the programs under this act and prior to the submission of a formula or competitive grant application to the Department. The consultation shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

6. *May an LEA, consortium, or entity ask private school representatives to submit documentation?*

Yes. LEAs, consortiums, or entities may request that reasonable documentation be submitted in a timely manner, as needed, from private school officials to help the LEA, consortium, or entity identify educational services that may be appropriate to the needs of private school students and educators. Such documentation should be limited to a description of the needs of the students and/or educators and a brief description of the services and programs desired to meet those needs. If specific documentation is not available, other equivalent documentation may be used.

7. *What kinds of records should an LEA, consortium, or entity maintain in order to show that it has met its responsibilities for equitable participation of private school educators and/or students?*

To meet its general record-keeping responsibility, an LEA, consortium, or entity should document that:

- (a) Representatives of private schools were informed of the availability of services in a timely manner.
- (b) The needs of private school educators and/or students were identified.

- (c) Private school officials were consulted and provided an opportunity for input into the planning of the LEA's, consortium's, or entity's program activities on a regular basis.
- (d) The amount of funds made available were equitable to those allocated for public school students and educators.
- (e) The LEA, consortium, or entity-designed project met the needs of the private school educators and/or students.

The LEA, consortium, or entity also should maintain records of its efforts to resolve any complaints made by private school representatives regarding any issues that are raised.

Note: For Title I, see Question 7 in the Program Specific section.

8. *Who has control of the funds?*

NCLB §9501 states that the LEA, consortium, or entity maintains control of the federal funds used to provide services under the grant programs funded through the No Child Left Behind Act. It also maintains title to materials, equipment, and property purchased with those funds. LEAs, consortiums, or entities may allow the private schools to keep the items from year to year, in accordance to approved ongoing activities, so long as appropriate records are maintained. Thus, private schools receive **no** direct federal funding under this act.

Funds used to provide services under this section shall not be commingled with non-federal funds.

9. *How does the California Department of Education receive and use information on private school student enrollment?*

California *Education Code* §33190 states that private schools are required to complete and submit a *Private School Affidavit* containing enrollment figures and other information between October 1st and October 15th to the California Superintendent of Public Instruction. Affidavits and statistical information generated from compliance with this regulation can be found at <<http://www.cde.ca.gov/sp/ps/rq/affidavit.asp>>.

The Department uses private and public school enrollment information to calculate grant entitlement allotments. NCLB §1120 specifies that the formula for determining Title I funds to private schools is determined by student residency. In order to receive Title I subsidies students must reside within district boundaries. Conversely, grant formulas for Titles II, III, IV, and V are based on total enrollment figures rather than residency. This means that all students in the private school, including those who are not residents of the district, are counted for allocation purposes for Titles II, III, IV, and V.

In addition, for Title III purposes, all private schools are asked to submit data on the annual enrollment of eligible immigrant students via the Student National Origin Report (SNOR). For details please go to <<http://www.cde.ca.gov/sp/el/t3/snor.asp>>. Identification of LEP students should be conducted according to instructions from the local public school district. Additional details are available at <<http://www.cde.ca.gov/sp/el/t3>>.

10. *Are private school students and educators entitled to equitable participation in competitive grants as well as in formula grants?*

Yes. In some cases, private school students, teachers, and other educational personnel are entitled to equitable participation in programs funded through competitive grants. These competitive grant programs include:

- 21st Century Learning Centers.
- Reading First.
- Even Start.
- Title IID: Enhancing Education Through Technology.

Under Uniform Provisions LEAs, consortiums, and entities seeking these competitive grant funds must consult with appropriate private school officials during the design and development of the proposal prior to grant submission. Consultation continues throughout the implementation and assessment of grant activities. Consultation is dynamic and requires the active participation of both parties, the LEA, consortium, or entity and the private school representative. Thus, types or methods for consultation may include face-to-face meetings, electronic interaction, and/or telephone conversations.

11. *How can private schools assist the LEA, consortium, or entity in meeting the obligation for equitable participation and consultation?*

Private schools can facilitate the process by:

- Completing and submitting the Private School Affidavit to the California State Superintendent of Public Instruction, Elementary Education Office by October 15 each year.
- Responding to the LEA's, consortium's, or entity's request for information in a timely manner.
- Providing documentation on the needs of students, teachers, and other educational personnel in accordance with each grant program's requirements.
- Assessing student achievement in accordance with grant program requirements.
- Forming private school work groups within districts to facilitate the consultation process.

12. *What recourse is available if an LEA, consortium, or entity will not use its federal funds to provide equitable services to private school students, teachers, and other educational personnel?*

The private school should first work to resolve the concerns at the local level. If a reasonable solution cannot be reached, the individual(s) or organization(s) alleging a violation of §9501 through §9504 by a SEA, LEA, educational service agency, consortium of those agencies, or entity must submit the complaint to the California Department of Education Elementary Education Office for a written resolution within a reasonable amount of time. The state appeals process and subsequent policies are currently being defined. An advisory will be disseminated once these are finalized. If this resolution is not acceptable, the interested party may appeal the decision to the Secretary at the United States Department of Education within 30 days. The secretary shall investigate and resolve the appeal not later than 120 days after receipt of the appeal.

13. *Do charter schools need to provide equitable services to private schools?*

No. Although charter schools are considered LEAs for the purpose of receiving federal entitlement funds, they are not subject to the provisions regarding equitable participation of private schools.

14. *Does the law require that an LEA, consortium, or entity provide equitable services with NCLB funding only to private “nonprofit” schools?*

Yes. NCLB §9501 requires LEAs, consortiums, or entities to provide equitable services to students, teachers, and other educational personnel in “private elementary and secondary schools.” NCLB defines “elementary” and “secondary” schools to mean only “nonprofit institutional day or residential school(s)” (NCLB §9101).

PROGRAM SPECIFIC INFORMATION

The following questions and answers pertain to specific programs.

Section A

Title I, Part A – Improving Basic Programs Operated by Local Educational Agencies

Title I, Part A, provides supplementary instruction by public school teachers or through a third-party contractor to students who are educationally disadvantaged and failing or are most at risk of failing to meet high academic standards, and who live in areas of high poverty. Instruction may take place during the school day, before or after school, or in the summer.

A1. *What is the applicability of state academic assessment to private schools?*

Private schools, including private schools with Title I students, are not required to participate in a state's academic assessments. If a private school has students who receive Title I services, the LEA, consortium, or entity must consult with private school officials about how those students will be assessed.

NCLB §200.10 addresses this issue. Specifically, it states:

Nothing in Sec. 200.1 or Sec. 200.2 requires a private school whose students receive Title I services to participate in a State's academic assessment system.

- (a) If an LEA, consortium, or entity provides services to eligible private school students, the LEA, consortium, or entity must, through timely consultation with appropriate private school officials, determine how services will be academically assessed and how the results of that assessment will be used to improve those services.
- (b) The assessments may be the State's academic assessments or other appropriate academic assessments. These Title I regulations for standards and assessment requirements went into effect on August 5, 2002, and are available at:
<<http://www.ed.gov/legislation/FedRegister/finrule/2002-3/070502a.html>>

A2. *How are Title I funds for private school students determined?*

NCLB §1120 specifies that funds are generated on the basis of the number of students from low-income families who reside in participating public school attendance areas and attend private schools whether the private schools are located within or outside district boundaries. Private school students who reside within a Title I attendance area, and who are failing or most at risk of failing to meet high academic standards, are eligible for services.

After timely and meaningful consultation the local educational agency, consortium, or entity shall “have the final authority to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools.” NCLB §1120 states that the following processes may be employed:

- Use the same measure of low income used to count public school children (i.e., free and reduced lunch count).
- Use the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable.
- Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area.
- Use an equated measure of low income correlated with the measure of low income used to count public school children.

Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency, consortium, or entity may determine each year or every 2 years (§1120).

Also, see Title I, Appendix D: Generating Funds for Services to Eligible Private School Students at:

http://finance1.doe.mass.edu/Grants/grants03/rfp/305_appn_d.html.

A3. *Where may Title I services be provided to private school students?*

Under Title I §1120, services may be provided at the private school, including religiously affiliated schools, or at other locations.

However, such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological. See Guidance on the Supreme Court's Decision in *Agostini v. Felton* and Title I (Part A) of NCLB at:

<http://www.ed.gov/legislation/ESEA/feltguid.html>.

A4. *What services may be provided to private school students, parents, and educators?*

NCLB §1111 states that services may include assistance through a pullout model, supplementary instruction, direct instruction, computer-assisted instruction, tutoring, counseling, family literacy, and early childhood programs. In addition, the law requires equitable participation of private school teachers and other educational personnel of Title I students in professional development activities and of parents of Title I students in parent involvement activities.

A5. *Who may be contracted to provide services in private schools?*

Services identified in NCLB §1120 may be provided:

- By employees of the LEA, consortium, or entity or another public agency.
- Through contracts with third-party providers such as public and private agencies, organizations, and institutions.

Uniform Provisions states that the provision of those services, the employee, person, association, agency, organization, or entity shall be independent of the private school and of any religious organization. The employment or contract shall be under the control and supervision of the LEA, consortium, or entity.

A6. *What qualifications must contracted service providers have?*

NCLB §119 requires that educators hired with Title I, Part A funds must be “highly qualified” as defined by the *No Child Left Behind Act* of 2001. Information about this definition can be found at:

<http://www.ed.gov/programs/teacherqual/guidance.doc>.

A7. *What records does the LEA, consortium, or entity need to maintain regarding private school participation in Title I services?*

An LEA, consortium, or entity is required to maintain records of an offer of consultation to officials at private schools where eligible students attend. Each local educational agency, consortium, or entity shall maintain in the agency's records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency, consortium, or entity shall forward the documentation that such consultation has taken place to the State educational agency.

Section B

Title I, Part B – Student Reading Skills Improvement Grants

NCLB §1201, *Reading First*, provides funding to implement comprehensive reading instruction for students in kindergarten through third grade. Funds must be used for reading programs; instructional materials; professional development; administering screening, diagnostic, and classroom-based reading assessments; collecting and reporting data; and promoting reading and library programs. Private school students in the areas served by public schools receiving Reading First funds are eligible for services.

B1. *Are private school students eligible to participate in the Reading First program?*

Yes. Funds awarded to LEAs, consortiums, or entities under *Reading First* are subject to the requirements of Uniform Provisions. The statute requires LEAs, consortiums, or

entities to provide private school students, teachers, and other educational personnel with educational services that address their needs related to *Reading First* on an equitable basis with public school students, teachers, and other educational personnel. LEAs, consortiums, or entities must provide these services in a timely manner.

Funds going toward educational services (and other benefits) for private school students and their educators must be equal on a per-pupil basis to the funds provided for participating public school students and educators, taking into account the number and educational needs of the students to be served.

All services and benefits provided to private school students and their educators under *Reading First* must be secular, neutral, and nonideological.

LEAs, consortiums, or entities seeking *Reading First* grants must consult with appropriate private school officials during the design and development of their *Reading First* plans on such issues as determining eligibility of private school students; identifying the students' needs; what services will be offered; how, where, and by whom services will be provided; and how the services will be assessed.

B2. *How is the eligibility of private school students determined?*

In general, under Uniform Provisions private school students in the areas served by public schools receiving *Reading First* funds would be eligible. This determination can be made either through private school students residing in the attendance area of a public school receiving *Reading First* funds, or by the location of a private school in the attendance area of a public school receiving *Reading First* funds. The Department will provide further guidance on this area through its competitive *Reading First* Request for Proposals process and associated correspondence.

<p style="text-align: center;">Section C Title I, Part C – Education of Migratory Children</p>
--

The Migrant Education program is governed by the Uniform Provisions and requires the equitable participation of private school migrant students and their teachers, and other education personnel in schools located in targeted areas.

<p style="text-align: center;">Section D</p> <p style="text-align: center;">Title II, Part A - Teacher and Principal Training and Recruiting Fund</p>

Title II, Part A provides assistance for preparing, training, recruiting, and retaining high-quality teachers. The amount of funding available for services to private school personnel is governed by NCLB §9501, which requires equitable participation of private school teachers and other education personnel to the extent that the LEA, consortium, or entity uses its funds for professional development.

In accordance with NCLB §1114 professional development activities may include:

- Improving the knowledge of teachers, principals, and other educational personnel in one or more of the core academic subjects and in effective instructional teaching strategies, methods, and skills.
- Training in effectively integrating technology into curricula and instruction.
- Training in how to teach students with different needs, including students with disabilities or limited English proficiency, and gifted and talented students.
- Training in methods of improving student behavior, identifying early and appropriate interventions, and involving parents more effectively in their children's education.
- Leadership development and management training to improve the quality of principals and superintendents.
- Training in the use of data and assessments to improve instruction and student outcomes (U.S. Department of Education (12/19/02). *Non-Regulatory Draft Guidance*, p.3).

D1. *How does an LEA, consortium, or entity determine the amount of funds required for equitable services to private school educational personnel?*

Funds provided for professional development for private school teachers must be equal to the amount spent for public school teachers, on a per-pupil basis. Hence, on a per-pupil basis, expenditures for professional development for public and private school teachers must be equal. The statute expects that the LEA, consortium, or entity spends, at a minimum, the amount expended by the LEA, consortium, or entity for professional development in 2001-2002 under the Eisenhower Professional Development and Class-Size Reduction programs.

To determine the per-pupil allocation under NCLB §1113, LEAs, consortiums, or entities should take the total amount allocated for professional development in the district and divide this amount by the total number of public school students and private school students (enrolled in private elementary and secondary schools in the area served by the LEA, consortium, or entity) to arrive at a per-pupil amount. This per-pupil amount should then be multiplied by the total number of students enrolled in private schools to arrive at a total amount of funds to be designated for professional development for private school educators participating in the program.

When calculating the total amount of funds to be used for professional development, an LEA, consortium, or entity may first deduct the cost of administering the professional development program under Title II, Part A, including activities for private school educators (§1120). See question 11 in this section.

D2. *What happens if an LEA, consortium, or entity decides not to use any of its Title II, Part A funds for professional development? How does the LEA, consortium, or entity meet its obligation to provide for the equitable participation of private school educators?*

Under Uniform Provisions the LEA, consortium, or entity must set aside Title II, Part A funds for professional development for private school educators, even if the district decides not to use any of these funds for professional development activities. For purposes of determining the amount of Title II, Part A funds that an LEA, consortium, or entity must make available for services to private school educational personnel, the statute creates a presumption that the LEA, consortium, or entity is spending at least as much for professional development under Title II, Part A as it did in 2001-2002 under the Eisenhower Professional Development and federal Class-Size Reduction programs. The total amount of funds expended by the district for professional development under these prior grant programs would be the basis for determining the per-pupil amount and total allocation for private school educators.

This is an ongoing requirement. That is, as long as the LEA, consortium, or entity receives Title II, Part A funds, it must assume that it is spending at least as much for professional development under Title II, Part A as it did in 2001-2002 under the Eisenhower Professional Development and federal Class-Size Reduction programs for purposes of calculating the equitable amount of funds to be spent on professional development for private school educators.

D3. *How does the LEA, consortium, or entity ensure that it is providing equitable services?*

In order to ensure that it is providing equitable professional development services to private school educational personnel, the LEA, consortium, or entity should consider ways to:

- Assess, address, and evaluate the needs and progress of both public and private school educators.
- Spend an equal amount of funds per student to serve the needs of public and private school educators and their students.
- Provide private school educators with an opportunity to participate in Title II activities equivalent to the opportunity provided public school educators.
- Offer educational services to private school educators that are secular, neutral, and nonideological.

D4. *What are some of the eligible activities under this program in which private school teachers and other educational personnel may participate?*

As with any activity sponsored by the LEA, consortium, or entity for public school educators, activities supported with Title II, Part A funds benefiting private school educators must meet the requirements of the Title II statute. NCLB §2101 states that activities carried out for private school personnel must be based on a review of scientifically-based research and must be expected to improve student academic achievement. Thus, only activities meeting these standards are eligible for funding.

Professional development as activities that may include:

- Improving the knowledge of teachers, principals, and other educational personnel in one or more of the core academic subjects.
- Improving the knowledge of teachers, principals, and other educational personnel in effective instructional teaching strategies, methods, and skills.
- Training in effectively integrating technology into curricula and instruction.
- Training in how to teach students with different needs, including students with disabilities or limited English proficiency, and gifted and talented students.
- Training in methods of improving student behavior, identifying early and appropriate interventions, and involving parents more effectively in their children's education.
- Leadership development and management training to improve the quality of principals and superintendents.
- Training in the use of data and assessments to improve instruction and student outcomes.

D5. *Does the professional development program for private school teachers have to be the same as the professional development program for public school teachers?*

No. According to Uniform Provisions consultation and coordination are essential to ensuring high-quality, sustained, intensive, and classroom-focused professional development activities for private school teachers. LEAs, consortiums, or entities must assess the needs of private school educators in designing the professional development program for private school teachers. If the professional development needs of the private school educators are different from those of public school educators, the LEA, consortium, or entity, in consultation with private school representatives, should develop a separate program with the private schools' equitable share. In designing the program to meet the needs of private schools, an LEA, consortium, or entity may "pool" the funds for the schools and allow the private schools to do joint planning.

D6. *What happens if an LEA's, consortium's, or entity's professional development offerings address some, but not all, of a private school's needs? How are costs calculated for private school participation in these activities and how does this affect the total private school allocation?*

After consultation, a district and private school may decide that the district's professional development activities address some of the private school's needs, but not all. Therefore, they may determine that the private school should participate in those activities and receive a reduced allocation to address its other needs. This reduction in allocation would reflect the cost of a private school's participation in a district's activity.

To arrive at the reduced allocation the district would determine the cost of the professional development activity that the private school wants to attend, then divide the total cost by the number of total participants in order to arrive at a per participant figure for that particular district offering. The district would then multiply the number of private school attendees by the per-participant cost. This would provide the private schools with the cost for participating in the activity. The district and private school would then deduct this amount from the total private school allocation. The private school would be able to use the remainder of its "allocation" for other activities that address its needs.

D7. *May funds be used to support the acquisition of advanced degrees by private school teachers?*

Yes. NCLB §2113 states that an LEA, consortium, or entity may use Title II, Part A funds to support a teacher's acquisition of an advanced degree, including the acquisition of a California State Teaching Credential, if in doing so, the degree program is consistent with the results of the needs assessment conducted for private school teachers. The financial support must be for graduate courses that would enable the teacher to provide more effective instruction.

D8. *May funds be used to pay stipends to private school educators participating in a Title II, Part A, Improving Educator Quality Grants professional development program?*

Yes. Title II, Part A funds may be used to pay for stipends for private school educators. The use of funds for stipends must be reasonable and necessary. For example, if the professional development activity is conducted during after-school hours or in the summer, stipends may be needed to compensate educators for their participation outside their regular employment hours. The stipends must be paid directly to the private school educators for their own use and not to the private school.

D9. *May Title II, Part A, Improving Educator Quality Grants funds be used to pay for substitute teachers who replace teachers from private schools while they attend professional development activities?*

No. The Title II, Part A program does not authorize payments to private schools to be used for hiring substitute teacher.

D10. *May Improving Teacher Quality State Grant funds be used to pay any portion of a private school teacher's salary or benefits?*

No. While LEAs, consortiums, or entities must set aside an amount of Title II, Part A funds for the equitable participation of private school teachers in professional development activities, funds may not be used to pay or subsidize any portion of a private school teacher's salary or benefits.

D11. *May administrative costs be considered in determining the per-teacher expenditures for private school teachers?*

No. LEAs, consortiums, or entities pay the costs of administering professional development programs for public and private school educational personnel "off the top" of their total allocation. This is calculated before determining how much of the Title II, Part A funds are to be made available for professional development of public and private school educators. Federal funds received are to be used to supplement, not supplant, non-Federal funds (§2123).

To determine the amount of Title II, Part A funds that an LEA, consortium, or entity must make available for equitable services to private school educational personnel, the LEA, consortium, or entity must assume that it is spending at least as much for professional development under Title II, Part A as it did in 2001-2002 under the Eisenhower Professional Development and federal Class-Size Reduction programs. This amount cannot be reduced by charging administrative costs to this portion.

D12. *Must the LEAs, consortiums, or entities administer and retain control over the Title II, Part A, Improving Educator Quality Grants funds used to serve private school educators?*

Yes. The LEA, consortium, or entity must administer and retain control over the funds and, therefore, may not provide program funds directly to private schools.

<p style="text-align: center;">Section E Title II, Part B - Math and Science Partnerships</p>

The Mathematics and Science Partnerships program provides funds to improve mathematics and science teaching through a variety of activities. At the current appropriations level, partnerships must include an SEA; an engineering, math or science department of an institution of higher education (IHE); and a high-need LEA, consortium, or entity. In accordance with NCLB §2201 nonprofit private schools may be members of these partnerships. The Mathematics and Science Partnerships program is governed by the Uniform Provisions and requires the equitable participation of teachers who teach in nonprofit private schools located in school districts where grants are awarded.

<p style="text-align: center;">Section F Title II, Part D - Enhancing Education through Technology</p>
--

The Enhancing Education Through Technology (EETT) program provides funds for innovative initiatives to support the integration of educational technology into classrooms to improve teaching and learning. Activities may include professional development in technology integration and the use of the Internet; distance learning initiatives; acquiring educational technology; and using technology to enhance parental involvement. This program is governed by the Uniform Provisions and requires the equitable participation of students and educators in private schools located in school districts that receive a Title IID grant. Additional information can be found at:

<<http://www.cde.ca.gov/ls/et/ft/eett.asp>>.

F1. *What do the equitable participation provisions in Title IID require LEAs, consortiums, or entities to do?*

LEAs, consortiums, or entities must engage in timely and meaningful consultation with appropriate private school officials during the design and development of programs and continue the consultation throughout the implementation of these programs. Therefore, for both EETT formula and competitive awards, the consultation should begin during the development of the local grant proposals. Eligible LEAs, consortiums, or entities that seek both competitive and formula funding under EETT may engage in consultations that simultaneously involve the Ed Tech competitive and formula grants.

LEAs, consortiums, or entities must provide, on an equitable basis, educational services or other benefits that address the educational technology needs students, teachers, and other educational personnel in private schools in areas served by the LEAs, consortiums, or entities.

Activities delineated in NCLB §2402 include professional development in technology integration and the use of the Internet; distance learning initiatives; acquiring educational technology; and using technology to enhance parental involvement.

F2. *Must the expenditures that the LEA, consortium, or entity provides for private school educators be equal on a per-pupil basis?*

Title II, Part D services for private school students, teachers, and other educational personnel must be equitable in relations to services to public school students, teachers, and other educational personnel under Uniform Provisions. The law also requires that funds for private schools be equal on a per-pupil basis. Hence, on a per-pupil basis, expenditures for public and private school students and educators must be equal.

The per-pupil allocation is based on the number of eligible students "enrolled in private elementary schools and secondary schools in areas served" by the school district. Residence is not a factor.

F3. *Who has control of the funds?*

NCLB §2414 states that the LEA, consortium, or entity maintains control of funds used to provide services under Title II, Part D. It also maintains title to materials, equipment, and property purchased with those funds.

<p style="text-align: center;">Section G Title III, Part A – English Language Acquisition, Language Enhancement, and Academic Achievement: An Overview</p>
--

NCLB §3102 describes the goals of the English Language Acquisition, Language Enhancement, and Academic Achievement program. It provides funds for helping limited English proficient (LEP) and eligible immigrant students attain English proficiency and meet the same challenging state academic content and student achievement standards as all students are expected to meet. Private school students, teachers, and other educational personnel whose schools are located within an LEA, consortium, or entity that receives a grant from the state are eligible to participate in this program, as required by the Uniform Provisions.

More information about Title III can be found at:

<http://www.cde.ca.gov/sp/el/t3/>.

G1. *What is meant by “equitable” participation by public and private school students and educational personnel in a Title III program?*

Participation is considered to be equitable if the LEA, consortium, or entity:

- Assesses, addresses, and evaluates the needs and progress of public and private school students and educational personnel on a comparable basis.
- Provides, in the aggregate, approximately the same amount of services to students, teachers, and other educational personnel with similar needs.
- Spends an equal amount of funds to serve similar public and private school students and educational personnel.
- Provides both groups of students, teachers, and other educational personnel equal opportunities to participate in program activities.

G2. *Must an LEA’s, consortium’s, or entity’s Title III program design be the same for both public and private school students and educational personnel?*

No. Consultation and coordination between LEA, consortium, or entity and private school officials are essential to ensure a high-quality program that meets the needs of the students being served and assists those students in attaining English proficiency and

meeting the same challenging standards as all students are expected to meet. The LEA, consortium, or entity must assess the needs of private school students, teachers, and other educational personnel in designing a program that meets their needs. If their needs are different from those of public school students, teachers, and other educational personnel, the LEA, consortium, or entity, in consultation with private school officials, must develop a separate program design that is appropriate for their needs.

G3. *Are private school students receiving Title III services required to participate in the English language proficiency assessments that are required of public school students receiving Title III services?*

According to NCLB §3102, private school students receiving Title III services, like participating public school students, must be assessed annually for their level of English proficiency in the domains of speaking, listening, reading, writing, and comprehension. Private schools may use one of the English language proficiency assessments approved by the state CDE and selected by the local public school district. A list of approved assessments is available at <http://www.cde.ca.gov/sp/el/t3/>. In any case, the assessments must be comparable to those used for the public school students and aligned with the academic learning standards established by the state or by the private school.

G4. *Does the Title III requirement on language qualifications for teachers providing Title III services to public school students apply to teachers providing these services to private school students?*

Yes. Like teachers serving public school limited English proficient students, teachers providing Title III services to private school students must be fluent in English and any other language used for instruction.

G5. *How are limited English proficient students identified?*

Private schools before receiving Title III services, under NCLB §3113, must establish a consistent and reasonable process for identifying LEP students. This will entail using qualified staff and appropriate procedures and assessments to assess the ability of students whose first language is not English. Specific procedures and English proficiency assessments must be approved by the local public school district.

Information on the number of LEP students in the private school should be recorded in the Private Individual School Report (ISR) form (see General Question #9).

G6. *How are eligible immigrant students identified?*

Private schools are required to submit annually the Student National Origin Report (SNOR). The SNOR consists of a count of all foreign-born students who have been enrolled in any U.S. school within the kindergarten to grade twelve span for a period of three full academic years or less. Specific instructions are contained in the SNOR form

and the *Directory of National Origin Names and Country Codes* located at <http://www.cde.ca.gov/sp/el/t3/snor.asp>.

Section H

Title IV, Part A—Safe and Drug-Free Schools and Communities: Overview

The *Safe and Drug-Free Schools and Communities* Act supports programs that foster a safe and drug-free learning environment. Activities authorized in NCLB §4114 include:

- Drug, violence, and suicide prevention programs.
- Professional development and training.
- Developing school security plans.
- Conflict resolution, community service, and character education programs.
- Family involvement activities.
- Counseling.
- Mentoring.
- Emergency intervention services.

H1. *What private school students can receive Title IV, Part A services?*

Under Uniform Provisions any student attending a private school within the boundaries of the LEA, consortium, or entity and whose school chooses to participate in the program may receive services.

H2. *Must an LEA's, consortium's, or entity's Title IV, Part A program design be the same for both public and private school students and educational personnel?*

No. To the extent consistent with the number of students who are enrolled in private elementary and secondary schools in areas served by the LEA, consortium, or entity, the LEA, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials, provide to those students and their educators, educational services or other benefits that address their needs under the program.

The required consultation shall occur before the LEA, consortium, or entity makes any decision that affects the opportunities of eligible private school students, teachers, and other educational personnel to participate in programs, and should continue throughout the implementation and assessment of activities.

Educational services and other benefits provided for private school students, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school students, teachers, and other educational personnel participating in the program and shall be provided in a timely manner. These services may or may not be the same as those provided to public school students, teachers, and other educational personnel.

Expenditures for educational services and other benefits for private school students, teachers, and other educational personnel serving those students shall be equal on a per-pupil basis, taking into account the number and educational needs of the students to be served, to the expenditures for participating public school students, teachers, and other educational personnel.

H3. *Who may provide the services?*

Services shall be provided:

- By employees of the LEA or another public agency.
- Through a contract by the public agency with an individual, association, agency, organization, or other entity.

In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the LEA, consortium, or entity.

H4. *Who has control of the funds?*

The LEA, consortium, or entity maintains control of funds used to provide services under Title IV, Part A. The LEA, consortium, or entity may provide a budget for the year to each private school in order to assist in the planning process. It also maintains title to materials, equipment, and property purchased with those funds.

<p style="text-align: center;">Section I Title IV, Part B—21st Century Community Learning Centers: Overview</p>

The 21st Century Community Learning Centers (21st CCLC) program provides before-and after-school (including summer) services to students and their families that include academic enrichment activities, particularly for students who attend low-performing schools, to help them meet state and local student performance standards in core academic subjects. Activities may include: remedial education; academic enrichment; art; music; tutoring; mentoring; recreation; technology; drug and violence prevention; counseling; character education; and, family literacy.

The Uniform Provisions apply to the 21st CCLC program and require the equitable participation of private school students and education personnel who are part of the target population.

I1. *Are religious organizations, including entities such as religious private schools, eligible to receive 21st CCLC grants from the California Department of Education?*

Yes. Faith-Based Organizations (FBOs) are eligible to apply for a 21st CCLC grants provided they meet all statutory and regulatory requirements of this program. A local grantee, including a FBO may not discriminate against beneficiaries on the basis of

religion. In matters of program eligibility, the Department may not discriminate against grant applicants with regard to religion. However, NCLB §4204 requires that states give priority to applications submitted jointly by an LEA, consortium, or entity receiving Title I funds and a CBO or other agency proposing to serve students in schools in need of improvement under NCLB §1116.

Funds are to be used solely for the purposes set forth in this grant program. NCLB §9505 states that no funds may be expended to support religious practices, such as religious instruction, worship, or prayer. FBOs may offer such practices, but not as part of the program receiving assistance, and FBOs should comply with generally applicable cost accounting requirements to ensure that funds are not used to support these activities. For example, FBOs may wish to keep grant funds in a separate account or accounts to ensure that they are not used inappropriately. Office of Management and Budget (OMB) Circulars A-21 (for educational institutions) and A-122 (for non-profit organizations) provide further guidance regarding these accounting requirements.

12. *Are private school students, teachers, and other educational personnel eligible to participate in 21st CCLC activities carried out by public schools?*

Yes. Students, teachers, and other educational personnel are eligible to participate in 21st CCLC programs on an equitable basis. A public school or other public or private organization that is awarded a grant must provide equitable services to private school students, their families, and their educators if those students are part of the population identified for assistance.

<p style="text-align: center;">Section J Title V, Part A—Innovative Programs: Overview</p>
--

Innovative Programs, as mandated by NCLB §5142, support education reform and innovative school improvement programs to improve school, student, and teacher performance. Private school students, teachers, and other educational personnel may receive professional development, library materials, and educational equipment. Other activities may include:

- Community service programs.
- Consumer education.
- Purchase of computer hardware and software.
- Programs to hire and support school nurses.
- School-based mental health services.
- Programs for cardiopulmonary resuscitation training in schools.
- Parent and community involvement.

J1. *How may private school students and educators receive services under Title V, Part A?*

An LEA, consortium, or entity must provide Title V, Part A services to private school students and educators if, after consultation with private school officials, the officials of the private school indicate that they wish their students and/or educational personnel to participate under Uniform Provisions. The LEA, consortium, or entity must contact the private schools within the LEA, consortium, or entity annually to determine which schools wish to participate. The LEA, consortium, or entity must consult with the officials of interested private schools in a timely and meaningful manner to determine the needs of the students, the types of Title V, Part A services that will be provided, and how those services will be provided. The LEA, consortium, or entity provides those services on an equitable basis whether or not the services are the same Title V, Part A services the LEA, consortium, or entity provides to the public school students and educators.

The expenditures for such services, however, shall be equal on a per-pupil basis (consistent with the number of students enrolled) to Title V, Part A services provided to the public school.

When calculating the per-pupil allocation for Title V, Part A, the per-pupil allocation is based on the number of students "enrolled in private elementary and secondary schools in areas served" by the school district. Residence is not a factor.

NCLB §5142 specifies that LEAs, consortiums, or entities pay the cost of administering Title V, Part A services for public and private school students "off the top" of their allocations, before calculating how much of the Title V, Part A funds are to be made available for services for public and private school students, teachers, and other educational personnel.

J2. *What administrative requirements apply regarding the provision of services to private school students and educators?*

The services, materials, and equipment that an LEA, consortium, or entity provides for the benefit of participating private school students and educators must be secular, neutral, and nonideological. The control of Title V, Part A funds and the title to any equipment and materials purchased with those funds must remain in the LEA, consortium, or entity. No Title V, Part A funds may be paid to any private school, and the title to equipment and materials may not be transferred to any private school.

Title V, Part A services must be provided by a public agency either directly or through a contractor. Any contractor must be a person or an association, agency, or corporation who or that, in the provision of the Title V, Part A services, is independent of the private school and any religious organization. A public agency must supervise and have ultimate control over any contractor hired to provide Title V, Part A services.

Title V, Part A services for private school students must supplement, and in no case supplant, the level of services that would be available to participating students, teachers, and other educational personnel in the private schools in the absence of the Title V, Part A funds.

J3. *How may an LEA, consortium, or entity ensure that Title V, Part A resources are provided in a proper manner for the benefit of private school students, teachers, and other educational personnel?*

LEAs, consortiums, or entities should implement safeguards and procedures to ensure that Title V, Part A funds are used properly for private school students and educators.

First, private school officials should be fully informed of and agree to the limitations on the use of any equipment and materials located in the private school. LEAs, consortiums, or entities should obtain from the appropriate private school official a written assurance that any equipment and materials placed in the private school will be used only for secular, neutral, and nonideological purposes; that private school personnel will be informed as to these limitations; and that the equipment and materials will supplement, and in no case supplant, the equipment and materials that, in the absence of the Title V, Part A program, would have been made available for the participating students.

Second, the LEA, consortium, or entity is responsible for ensuring that any equipment and materials placed in the private school are used only for proper purposes. The LEA, consortium, or entity should determine that any Title V, Part A materials, such as library books and computer software, are secular, neutral, and nonideological. A good benchmark for this review is that the equipment and materials would be appropriate for use in public schools.

The LEA, consortium, or entity should mark all equipment and materials purchased with Title V, Part A funds so that they are clearly identifiable as Title V, Part A property of the LEA, consortium, or entity. The LEA, consortium, or entity should maintain an up-to-date inventory of all Title V, Part A equipment and materials provided for the benefit of private school students. It is also a helpful practice for private schools to maintain logs to document the use of Title V, Part A equipment and materials located in their schools. The LEA, consortium, or entity should perform periodic on-site monitoring of the use of the equipment and materials. The monitoring could include on-the-spot checks of the use of the equipment and materials, discussions with private school officials, and a review of any logs maintained.

Third, the LEA, consortium, or entity should designate someone to oversee Title V, Part A services for private school students and ensure that services, materials, and equipment provided for these students are secular, neutral, and nonideological. The designated person should also be responsible for receiving and handling any complaints or

allegations that Title V, Part A funds are being used for improper activities for private school students and educators.

LEAs, consortiums, or entities need to ensure that if any violations occur, they are corrected at once. An LEA, consortium, or entity must remove materials and equipment from a private school immediately if removal is needed to avoid an unauthorized use.

J4. *May private school students, teachers, and other educational personnel receive services under any Title V, Part A innovative program area?*

If Title V, Part A funds are used to provide services for private school students and educators, these services must primarily benefit the students and educators, not the private schools. This means that the funds must be used to meet specific needs of students enrolled in the private schools, rather than the needs of the private schools themselves or the general needs of the students enrolled in the private schools (See §76.658 of the *Education Department General Administrative Regulations* (EDGAR)).

NCLB §5131 specifies that when working with private schools to decide what Title V, Part A programs and activities will be carried out for students, teachers, and other educational personnel in those schools, LEAs, consortiums, or entities must ensure that the programs and activities are supplemental in nature and will meet the specific needs of the students enrolled in the schools. For example, LEAs, consortiums, or entities may not use funds for class-size reduction purposes in a private school. This use of funds, which would involve hiring teachers for private school classrooms, would meet the needs of the private schools themselves, as well as the general needs of the students enrolled in the schools, rather than the specific needs of those students. However, LEAs, consortiums, or entities may use funds to provide professional development activities for educators in private schools.

There are several innovative assistance programs that, by their nature, cannot be carried out in a private school. These include:

- (1) The planning, design, and initial implementation of charter schools.
- (2) Activities to promote, implement, or expand public school choice.
- (3) Programs to implement the unsafe school choice policy in NCLB §9532.

For all other innovative assistance programs, particularly those involving education reform or school improvement activities, LEAs, consortiums, or entities must evaluate closely whether the activities proposed to be carried out in a private school will primarily benefit the students enrolled in the school or the school itself. If the latter, then the LEA, consortium, or entity may not permit that activity or program to be implemented in the private school. In some instances, a program or activity that primarily benefits the private school's students (because it addresses specific, rather than general, needs of the students) will also incidentally benefit the school. The LEA, consortium, or entity may permit a program or activity of this type to be carried out in the private school. However,

LEAs, consortiums, or entities must be careful in this determination and may not authorize any services whose purpose is to benefit the general needs of the private school or its students.

J5. *What are the obligations of LEAs, consortiums, or entities to private schools that did not participate in Title V, Part A programs in the preceding year?*

The LEA has the obligation to contact, on an annual basis, appropriate officials from private schools within the LEA, consortium, or entity to determine whether such schools desire that their students and/or educational personnel participate in Title V, Part A programs. This must be done for all schools whether or not they participated in the program during the previous year. Once a private school agrees on behalf of its students and educators to participate, the enrollment of those students is considered in calculating the allocation for the LEA, consortium, or entity for the following year. The method for calculating funds does not diminish the responsibilities of the LEA, consortium, or entity under NCLB §5142.

J6. *What happens if an LEA, consortium, or entity chooses not to participate in the Title V, Part A program?*

If no program is carried out in the LEA, consortium, or entity, the California Department of Education shall make arrangements to provide students and educators in private schools in the LEA, consortium, or entity services and materials to the same extent as would have occurred if the LEA, consortium, or entity had received funds. These arrangements may be set up through contracts with nonprofit agencies or organizations.

<p style="text-align: center;">Section K Title V, Part D, Subpart 6 – Gifted and Talented Students</p>
--

NCLB §5466 mandates that provision is made for the equitable participation of students and teachers in private nonprofit elementary schools and secondary schools, including the participation of teachers and other personnel in professional development programs serving gifted and talented students.

<p style="text-align: center;">Section L Transferring NCLB Funds: Private School Involvement: Overview</p>
--

In general, an LEA, consortium, or entity may transfer up to 50 percent of each fiscal year's funds that it receives *by formula* under the following provisions:

- Title II, Part A - Improving Educator Quality Grants
- Title II, Part D - Enhancing Education Through Technology Grants
- Title IV, Part A - Safe and Drug-Free Schools and Communities Grants

- Title V, Part A - Innovative Programs

An LEA, consortium, or entity that has been identified for program improvement under NCLB §1116 may transfer up to 30 percent of each fiscal year's funds that it receives *by formula* under each of the programs listed above. All of the transferred funds must be used for LEA, consortium, or entity program improvement activities consistent with the statute. An LEA, consortium, or entity that has been identified for corrective action may not transfer funds from one program to another during the period that it is in corrective action status.

The questions and answers below focus on private school involvement in the transferring of funds. For complete guidance on this topic, go to:
<<http://www.ed.gov/programs/transferability/guidance.doc>>.

L1. *Does the LEA, consortium, or entity need approval from the California Department of Education or from the United States Department of Education to transfer NCLB funds among eligible programs?*

The law authorizes an eligible LEA, consortium, or entity to transfer funds without seeking approval from either the California Department of Education or the United States Department of Education. Thus, an LEA, consortium, or entity does not have to apply for transferability authority – it already has that authority. However, the LEA, consortium, or entity must notify the California Department of Education of its intent to transfer funds at least 30 days before each transfer occurs.

L2. *What steps must an LEA, consortium, or entity take before transferring funds?*

Before transferring funds, an LEA, consortium, or entity must:

- (a) Conduct consultations in accordance with Uniform Provisions in order to provide for the equitable participation of private school students and staff.
- (b) Determine what funds are to be transferred (subject to the applicable percentage limitation) and the programs to which the funds will be transferred on the basis of the LEA's, consortium's or entity's priorities and after engaging in the consultations referenced in paragraph (1).
- (c) Modify each affected LEA, consortium, or entity plan or application to account for the transfer.
- (d) Establish an effective date for the transfer.
- (e) Notify the Department of the transfer at least 30 days *before* the effective date of the transfer. (If a transfer results in a significant change in the administration or operation of a local plan or application, the LEA, consortium, or entity must also submit to the Department, within 30 days after the transfer, a copy of its revised local plan or application.)

L3. *How do requirements relating to the equitable participation of private school students and staff apply to funds that an LEA, consortium, or entity is considering to transfer?*

Under Uniform Provisions, each of the programs covered by the LEA, consortium, or entity transferability authority is subject to the equitable participation requirements of each title. Thus, before an LEA, consortium, or entity may transfer any funds, it must engage in timely and meaningful consultation with private school officials. With respect to the transferred funds, private school students and teachers are entitled to receive equitable services from the LEA, consortium, or entity under the programs to which the funds are transferred.

An LEA, consortium, or entity may not transfer funds to a particular program solely to provide services for private school students and/or educators. Rather, the LEA, consortium, or entity provides equitable services to private school students and educators from the overall funds of a program, including the transferred funds.

L4. *May an LEA, consortium, or entity transfer funds more than one time during a year?*

Yes. The law does not limit the number of times an LEA, consortium, or entity may transfer funds during a year.